

1 JAMES E. SELL, ESQ. (SBN 135935)
Jsell@tysonmendes.com
2 MATTHEW G. TANG, ESQ. (SBN 272586)
mtang@tysonmendes.com
3 **TYSON & MENDES, LLP**
523 Fourth Street, Suite 100
4 San Rafael, CA 94901
Phone: (628) 253-5070
5 Facsimile: (415) 785-3165

6 Attorneys for Defendant ENGINEERING/
7 REMEDIATION RESOURCES GROUP, INC.

8
9 **UNITED STATES DISTRICT COURT**
10
11 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

12 ECOLOGY RECYCLING SERVICES, LLC;
13 ECOLOGY AUTO PARTS, INC.; JOSE G.
14 GONZALEZ LICON; AND MARY LOUISE
15 LARA,

16 Plaintiffs,
17
18 v.
19

20 ENGINEERING/REMEDIATION
21 RESOURCES GROUP, INC. also known as
22 ERRG; and Does 1 through 10, inclusive

23 Defendants.
24
25
26
27
28

Case No. 5:19-cv-00278 FMO (SHKx)
& Case No. 5:19-cv-00566 FMO (SHKx)
STIPULATED PROTECTIVE ORDER

Action Filed: December 7, 2018
Judge: Hon. Fernando M. Olguin

Trial Date: April 28, 2020

1

STIPULATED PROTECTIVE ORDER

2 Subject to the approval of this Court, the parties hereby stipulate to the following protective
3 order:

4 **1. A. PURPOSES AND LIMITATIONS**

5 Discovery in this action is likely to involve production of confidential, proprietary, or private
6 information for which special protection from public disclosure and from use for any purpose other
7 than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and
8 petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that
9 this Order does not confer blanket protections on all disclosures or responses to discovery and that
10 the protection it affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal principles. The parties
12 further acknowledge, as set forth in Section 12.3 below, that this Stipulated Protective Order does
13 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party seeks
15 permission from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists and other valuable
18 research, development, commercial, financial, technical and/or proprietary information for which
19 special protection from public disclosure and from use for any purpose other than prosecution of this
20 action is warranted. Such confidential and proprietary materials and information consist of, among
21 other things, confidential business or financial information, proprietary means and methods utilized
22 in connection with government contracting, confidential business practices, or other confidential
23 research, development, or commercial information (including information implicating privacy rights
24 of third parties), information otherwise generally unavailable to the public, or which may be
25 privileged or otherwise protected from disclosure under state or federal statutes, court rules, case
26 decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately protect information
28 the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable

1 necessary uses of such material in preparation for and in the conduct of trial, to address their handling
2 at the end of the litigation, and serve the ends of justice, a protective order for such information is
3 justified in this matter. It is the intent of the parties that information will not be designated as
4 confidential for tactical reasons and that nothing be so designated without a good faith belief that it
5 has been maintained in a confidential, non-public manner, and there is good cause why it should not
6 be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: this consolidated federal lawsuit, which encompasses Case No. 5:19-cv-
9 00278 FMO (SHKx) & Case No. 5:19-cv-00566 FMO (SHKx).

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
13 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
14 Civil Procedure 26(c), and as specified above in the Good Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
16 staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
20 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
21 transcripts, and tangible things), that are produced or generated in disclosures or responses to
22 discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
24 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
25 consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action
4 but are retained to represent or advise a party to this Action and have appeared in this Action on
5 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and
6 includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors, employees,
8 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
10 Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
12 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
13 storing, or retrieving data in any form or medium) and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
15 "CONFIDENTIAL."

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only Protected Material
20 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
21 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
22 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the trial judge. This
24 Order does not govern the use of Protected Material at trial.

25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

1 defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion
2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the
3 time limits for filing any motions or applications for extension of time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5.1 Exercise of Restraint and Care in Designating Material for Production: Each Party or
6 Non-Party that designates information or items for protection under this Order must take care to
7 limit any such designation to specific material that qualifies under the appropriate standards. The
8 Designating Party must designate for protection only those parts of material, documents, items, or
9 oral or written communications that qualify so that other portions of the material, documents, items,
10 or communications for which protection is not warranted are not swept unjustifiably within the ambit
11 of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
13 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
14 encumber the case development process or to impose unnecessary expenses and burdens on other
15 parties) may expose the Designating Party to sanctions.

16 5.2 Manner & Timing of Designations: Except as otherwise provided in this Order (see,
17 e.g., second paragraph of section 5.2.1 below), or as otherwise stipulated or ordered, Disclosure or
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 5.2.1 for information in documentary form (e.g., paper or electronic documents, but
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
23 affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to
24 each page that contains protected material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
26 by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection need not
28 designate them for protection until after the inspecting Party has indicated which documents it would

1 like copied and produced. During the inspection and before the designation, all of the material made
2 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
3 identified the documents it wants copied and produced, the Producing Party must determine which
4 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
5 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
6 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
7 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9 5.2.2 for testimony given in depositions that the Designated Party identify the
10 Disclosure or Discovery Material on the record, before the close of the deposition all protected
11 testimony.

12 5.2.3 for information produced in some form other than documentary and for any
13 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
14 container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a
15 portion or portions of the information warrants protection, the Producing Party, to the extent
16 practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the Designating Party’s
19 right to secure protection under this Order for such material. Upon timely correction of a
20 designation, the Receiving Party must make reasonable efforts to ensure that the material is treated
21 in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges: Any Party or Non-Party may challenge a designation of
24 confidentiality at any time that is consistent with the Court’s Scheduling Order.

25 6.2 Meet and Confer: The Challenging Party shall initiate the dispute resolution process
26 under Local Rule 37.1, *et seq.*

27 6.3 Burden: The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or

1 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
2 sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation,
3 all parties shall continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation until the Court rules on the challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
8 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the
9 categories of persons and under the conditions described in this Order. When the Action has been
10 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and in
13 a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

17 7.2.1 the Receiving Party's Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
19 information for this Action;

20 7.2.2 the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 7.2.3 Experts (as defined in this Order) of the Receiving Party to whom disclosure
23 is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement
24 to Be Bound” (Exhibit A);

25 7.2.4 the court and its personnel;

26 7.2.5 court reporters and their staff;

27 ///

28 ///

1 7.2.6 professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 7.2.7 the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 7.2.8 during their depositions, witnesses, and attorneys for witnesses, in the Action
7 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
8 witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any
9 confidential information unless they sign the “Acknowledgement and Agreement to Be Bound”
10 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be
12 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
13 this Stipulated Protective Order; and

14 7.2.9 any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
19 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party
20 must:

21 8.1 promptly notify in writing the Designating Party. Such notification shall include a
22 copy of the subpoena or court order;

23 8.2 promptly notify in writing the party who caused the subpoena or order to issue in the
24 other litigation that some or all of the material covered by the subpoena or order is subject to this
25 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

26 8.3 cooperate with respect to all reasonable procedures sought to be pursued by the
27 Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with the subpoena
2 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
3 before a determination by the court from which the subpoena or order issued, unless the Party has
4 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
5 expense of seeking protection in that court of its confidential material and nothing in these provisions
6 should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a
7 lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
9 THIS LITIGATION**

10 9.1 The terms of this Order applicable to information produced by a Non-Party in this
11 Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
12 connection with this litigation is protected by the remedies and relief provided by this Order.
13 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
14 protections.

15 9.2 In the event that a Party is required, by a valid discovery request, to produce a Non-
16 Party’s confidential information in its possession, and the Party is subject to an agreement with the
17 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

18 9.2.1 promptly notify in writing the Requesting Party and the Non-Party that some
19 or all of the information requested is subject to a confidentiality agreement with the Non-Party;

20 9.2.2 promptly provide the Non-Party with a copy of the Stipulated Protective
21 Order in this action, the relevant discovery request(s), and a reasonably specific description of the
22 information requested; and

23 9.2.3 make the information requested available for inspection by the Non-Party, if
24 requested.

25 9.3 If the Non-Party fails to seek a protective order from this court within 14 days of
26 receiving the notice and accompanying information, the Receiving Party may produce the Non-
27 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks
28 a protective order, the Receiving Party shall not produce any information in its possession or control

1 that is subject to the confidentiality agreement with the Non-Party before a determination by the
2 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
3 seeking protection in this court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
6 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
7 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
10 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
11 Be Bound” that is attached hereto as **Exhibit A**.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Party that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
17 modify whatever procedure may be established in an e-discovery order that provides for production
18 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and €, insofar as the
19 parties reach an agreement on the effect of disclosure of a communication or information covered
20 by the attorney-client privilege or work product protection, the parties may incorporate their
21 agreement in the stipulated protective order submitted to the court.

22 **12. MISCELLANEOUS**

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
24 its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
26 no Party waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
28

1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material
4 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
5 to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request
6 to file Protected Material under seal is denied by the court, then the Receiving Party may file the
7 information in the public record unless otherwise instructed by the court.

8 **13. FINAL DISPOSITION**

9 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a
10 written request by the Designating Party, each Receiving Party must return all Protected Material to
11 the Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
12 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
13 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
14 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
15 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
16 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
17 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
18 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
19 are entitled to retain any archival copy of all pleadings, motion papers, trial deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
21 work product, and consultant and expert work product, even if such materials contain Protected
22 Material. Any such archival copies that contain or constitute Protected Material remain subject to
23 this Protective Order as set forth in Section 4 (DURATION).

24 **14. VIOLATIONS OF THIS ORDER**

25 Any violation of this Order may be punished by any and all appropriate measures including,
26 without limitation, contempt proceedings and/or monetary sanctions.

28 *[Signature Page Follows On Next Page]*

1 Dated: July 5, 2019

TYSON & MENDES, LLP

3 By: /s/ Matthew G. Tang

4 James E. Sell, Esq.

5 Matthew G. Tang, Esq.

6 Attorneys for Defendant

7 ENGINEERING/REMEDIATION
RESOURCES GROUP, INC.

8 Dated: July 5, 2019

TUCKER ELLIS, LLP

10 By: /s/ Marc R. Greenberg

11 Marc R. Greenberg, Esq.

12 Attorneys for Plaintiffs

13 ECOLOGY RECYCLING SERVICES,
LLC & ECOLOGY AUTO PARTS, INC.

14 Dated: July 5, 2019

15 LERNER, MOORE, SILVA, CUNNINGHAM &
16 RUBEL, PLC

17 By: /s/ Darla A. Cunningham

18 Darla A. Cunningham, Esq.

19 Attorneys for Plaintiffs

20 JOSE G. GONZALEZ LICON & MARY
LOUISE LARA

21 **ELECTRONIC SIGNATURE ATTESTATION**

22 I, Matthew G. Tang, am the CM/ECF filer whose ID and password is being used to file this
23 Stipulated Protective Order. In compliance with Civil L.R. 5-4.3.4, I hereby attest that Marc R.
24 Greenberg and Darla A. Cunningham concur in this filing's content and have authorized the filing.
25

26 By: /s/ Matthew G. Tang

27 Matthew G. Tang

[PROPOSED] ORDER

The above stipulation having been considered and good cause appearing therefore,

IT IS SO ORDERED.

Dated: July 9, 2019

✓

The Honorable Shashi H. Kewalramani
UNITED STATES MAGISTRATE JUDGE

[Exhibit A “Acknowledgment and Agreement to Be Bound” on next page]

EXHIBIT A

Acknowledgment and Agreement to Be Bound

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Ecology Recycling Services, LLC, et al. v. Engineering/Remediation Resources Group, Inc., et al.*, Case No. 5:19-cv-00278 FMO (SHKx), consolidated with Case No. 5:19-cv-00566 FMO (SHKx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Dated:

City and State where sworn and signed:

Signature:

Printed Name:

1

CERTIFICATE OF SERVICE

2 I, Matthew G. Tang, certify under penalty of perjury under the laws of the United States that,
3 on July 5, 2019, I caused the following documents to be served by the method(s) indicated below on
4 the parties listed below: **STIPULATED PROTECTIVE ORDER.**

5

6 **PARTIES SERVED:** Ecology Recycling Services LLC and Ecology Auto Parts

7 Marc R. Greenberg
8 Tucker Ellis LLP
9 515 South Flower Street, 42nd Floor
10 Los Angeles, CA 90071
11 D: (213) 430-3355
C: (213) 215-8887
marc.greenberg@tuckerellis.com

12 Jose G. Gonzalez Licon and Mary Louise Lara
13 Darla A. Cunningham
14 Lerner, Moore, Silva, Cunningham & Rubel
15 141 N. Arrowhead Ave., Suite 1
16 San Bernardino, CA 92408-1024
D: (909) 889-1131
F: (909) 383-7761
dcunningham@injuryatwork.com

17 — **BY EMAIL:** on the parties in said cause, by sending an electronic copy to the email
18 address located on the service list.

19 X **BY ELECTRONIC SERVICE:** Pursuant to CM/ECF System, registration as a CM/ECF
20 user constitutes consent to electronic service through the Court's transmission facilities.
21 The court's CM/ECF systems send an e-mail notification of the filing to the parties and
22 counsel of record listed above who are registered with the Court's CM/ECF system.

23 Executed on July 5, 2019, at San Rafael, California.

24 _____
/s/ Matthew G. Tang
Matthew G. Tang